IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

MONDAY, THE 20TH NOVEMBER 2006 / 29TH KARTHIKA 1928

SA.No. 661 of 1993()

A.S.NO.223/90 OF THE DISTRICT COURT, THRISSUR FROM
O.S.NO.344/87 OF THE MUNSIFF COURT, CHAVAKKAD.

APPELLANT:

UKKRU.
S/O.PURATHUR CHERU,
KUNNAMKULAM VILLAGE,
PUTHENPETTA ANGADIYIL,
TALAPPILLY TALUK,
THRISSUR.

BY ADV. N.P SAMUEL

RESPONDENTS:

JAYATHILAKAN @ JAYAN,
S/O.AMMATH KARAPPU,
KUNNAMKULAM VILLAGE,
KANIYAMPAL DESOM,
TALAPPILLY TALUK,
THRISSUR DISTRICT.

BY ADV. P. VIJAYA BHANU

THIS SECOND APPEAL HAVING BEEN FINALLY HEARD ON 20/11/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

JUDGMENT

NONE APPEARS FOR THE APPELLANTS. HENCE THIS APPEAL IS DISMISSED FOR DEFAULT.

20.11.2006 SD/- THOTTATHIL B RADHAKRISHNAN,JUDGE

ORDER ON CMP NO.1584/1993 IN S.A.No.661 of 1993

// DISMISSED//

20.11.2006 SD/- THOTTATHIL B RADHAKRISHNAN,JUDGE

/TRUE COPY/

P.A.TO JUDGE

M.SASIDHARAN NAMBIAR, J.

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S.A No. 661 OF 1993

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DATED THIS THE 23RD DAY OF MAY, 2007

JUDGMENT

Defendant in O.S.344 of 1987 on the file of Munsiff Court, Chavakkad is the appellant. Plaintiff therein is the respondent. Respondent instituted the suit seeking a decree for recovery of possession on the strength of title. Plaint schedule property is two cents in Survey No.1626/2 of Kunnamkulam Village of Thalappilly Taluk. The property admittedly originally belonged to Karappu, father of the respondent. Under Ext.A4 assignment deed dated 3.5.1965, Karappu assigned the property including the plaint schedule property in favour of Achamma. Under Ext.A1 sale deed dated 31.12.1977, Achamma in turn assigned the plaint schedule property in favour of respondent. Respondent is claiming title to the plaint schedule property on the strength of Ext.A1 contending that appellant has no right or title to the property as appellant is claiming right under Ext.B1 assignment deed executed by Karappu which was executed after Ext.A4 assignment deed. Respondent instituted the suit seeking a decree for recovery of possession. Appellant filed a written statement contending that plaint schedule property was obtained

by Karappu as per an oral lease from Achamma and under Ext.B1 assignment deed dated 9.6.1972, it was purchased by the appellant and since then appellant has been in possession of the property and respondent has no title to the property and is not entitled to the decree for recovery of possession on the strength of title. It was contended that when respondent attempted to trespass into the plaint schedule property, appellant filed O.S.270 of 1980 seeking a decree of injunction and under Ext.A2 judgment, though the suit was dismissed under Ext.A3 judgment of the appellate court, a decree for injunction was granted in favour of the appellant and as appellant has been in exclusive possession of the property since 1972, the appellant has perfected his title by adverse possession and therefore respondent is not entitled to the decree sought for.

2. Learned Munsiff, on evidence of PW1 and DW1 and Exts.A1 to A4 and B1 to B3, held that under Ext.A1, respondent has title to the plaint schedule property and under Ext.B1 appellant has no better title and the oral lease, if any created subsequent to Ext.A4 is in violation of Section 74 of Kerala Land Reforms Act and appellant cannot therefore claim any right to the property and respondent is entitled to the decree for

recovery of possession. Suit was decreed. Appellant challenged the decree and judgment before District Court, Thrissur in A.S.223 of 1990. The learned District Judge, on re-appreciation of evidence, confirming the decree and judgment of learned Munsiff, dismissed the appeal. It is challenged in the second appeal.

3. Though notice was ordered in the appeal and records were called for, no substantial questions of law was formulated. Learned counsel appearing for appellant and respondent were heard.

4. Though a contention was raised in the written statement that Ext.A1 assignment deed does not take in the plaint schedule property, when examined as DW1, appellant unambiguously admitted that plaint schedule property forms part of the property covered under Ext.A1. Therefore if respondent has obtained title to the property under Ext.A1, necessarily respondent has title to the plaint schedule property.

5. Plaint schedule property admittedly originally belonged to Karappu. It was not disputed that under Ext.A4, Karappu sold the property in favour of Achamma and put her in possession of the property in 1965. It is thereafter under Ext.A1 respondent

purchased the property from Achamma. As rightly found by courts below, under Ext.A4 and A1, respondent has title to the plaint schedule property. The only question is whether appellant has better title to the property than the respondent and even if appellant has no title under Ext.B1 whether he has perfected the title by adverse possession and limitation.

6. The title set up by the appellant is under Ext.B1. It was executed on 9.6.1972 by Karappu, the assignor under Ext.A4. When Karappu had already alienated the property in 1965 under Ext.A4, he is not competent to execute Ext.B1 and assign the very same property. Realising the difficulty Ext.B1 sale deed was executed alleging that after Ext.A4 the property covered under Ext.B1 was obtained by Karappu as per an oral lease from Achamma the assignee under Ext.A4 and thus Karappu the assignor under Ext.A4 has been in possession of the property and that possession has been transferred under Ext.B1 to the appellant. Though learned counsel appearing for appellant vehemently argued relying on the evidence of the respondent as PW1 that he expressed ignorance about the suggestion of the counsel appearing for the respondent that appellant has been in possession of the property as per the transfer in 1972 effected by

the father of PW1, the expression of ignorance as such will not enable the appellant to contend that respondent admitted that appellant has been in possession of the property since 1972. When the appellant is claiming title by virtue of Ext.B1, it is for the appellant to prove that there was an oral lease in 1972 in favour of his assignor, Karappu. It is more so, because seven years prior to the execution of Ext.B1, Karappu had alienated the very same property in favour of Achamma. Case of the appellant was that thereafter there was an oral lease by the assignee under Ext.A4 in favour of the assign or therein which prima facie cannot be believed without sufficient evidence. Apart from the interested recital in Ext.B1, there was no evidence to prove that there was an oral lease as alleged. Even appellant has no case that Karappu was paying any rent to Achamma or obtained rent receipt from Achamma. Appellant did not even examine Achamma to prove that there was an oral lease. On the evidence, it could only be found that appellant did not establish that there was an oral lease before 1972 in favour of Karappu. There was also no evidence to prove that Karappu was in possession of the property, subsequent to Ext.A4 and before Ext.B1 so as to hand over possession of the property in favour of

appellant under Ext.B1 in 1972.

7. Though under Ext.A3 a decree for injunction was granted in favour of appellant, at best it would enable appellant to contend that from the date of institution of O.S.270 of 1980, he has been in possession of the property. The present suit was filed in 1987 and by such possession, appellant cannot claim that he has perfected the title by adverse possession. Moreover in the written statement appellant is not admitting title of the respondent. So long as the respondent is not admitting the title of the respondent, he cannot claim title perfected by adverse possession against respondent. On the facts and evidence of this case the concurrent findings of the court below are perfectly correct. I find no substantial question of law involved in the appeal.

Appeal is dismissed. No cost.

M.SASIDHARAN NAMBIAR, JUDGE

lgk/-

M.SASIDHARAN NAMBIAR, J

S.A.661/1993

JUDGMENT

23.5.2007